IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11024 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH PURSHOTTAMBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for the Petitioner.

Mr.Pancholi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the order dated 24.4.2002 passed by the Detaining Authority. By the said order, he is detained as a "dangerous person", under the provisions of the

Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is served with the grounds of detention. In the said grounds, there is a mention about a criminal case, which is registered at the Amraiwadi Police Station as : 0096/2002, dated 27.2.2002. The said case is registered for offences punishable under Sections 302 and 114 of IPC, read with Section 135(1) of the Bombay Police Act. It is alleged against the petitioner that he is a communal minded person and on 27.2.2002, he along with other people, tried to assault one person, who ultimately died due to the said assault. The petitioner was arrested in connection with the said case, but, subsequently, he was released on bail by the competent court. The authority has also considered statements of two witnesses and it was found by the detaining authority that the petitioner is a communal minded person and, accordingly, he is detained under the provisions of PASA.

At the time of hearing of this petition, learned Advocate for the petitioner submitted that there is only a solitary case registered against the petitioner and the alleged incident is dated 27.2.2002 and the detention order is passed on 24.4.2002. It is submitted that, if, really, the petitioner is a "dangerous person", the authority should not have delayed the matter for the purpose of passing the detention order.

Mr.Pancholi, learned AGP, however, submitted that he was arrested on 10th March, 2002 and, therefore, it cannot be said that there is unusual delay in passing the order. He also submitted that, in any case, statements of witnesses were recorded on 28th February, 2002 and 6.4.2002.

Learned Advocate for the petitioner also submitted that the detaining authority verified the statements of witnesses on 23rd April, 2002 and on the next day, the detention order is passed. Learned Advocate for the petitioner has relied on the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696. This Court observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July

> 1999, 13thJune, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

It is submitted that within such a short time, it cannot be presumed that the authority might have applied its mind objectively by considering the entire material on record. This fact that the authority has passed the detention order on the very next day is not in dispute. In that view of the matter, and in view of the judgment of this Court referred to above, the order of detention is required to be set aside, as it can be presumed that the order is passed in a mechanical way on the very next day after recording the statement of witnesses.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

19th February, 2003 (P.B. Majmudar, J.)

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(apj)